TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 143.

JULIAN E. WOODWELL, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 18, 1907.

(20,808.)

(20,808.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 405.

JULIAN E. WOODWELL, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 25, 1907.

1 In the Court of Claims of the United States.

No. 25635, General Jurisdiction.

JULIAN E. WOODWELL
v.
THE UNITED STATES.

I.—*Petition. Filed July* 6, 1904.

To the Honorable the Chief Justice and the Associate Justices of the Court of Claims:

Your petitioner, Julian E. Woodwell, a resident of Washington, D. C., respectfully represents and shows unto your Honors:

1. That he is a citizen of the United States, of lawful age, and was such at all times hereinafter mentioned.

2. That in an act of Congress entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June Thirtieth, Nineteen Hundred and Two, and for other purposes," approved March 3, 1901, there is provided—

For the establishment of an electric-lighting plant for the buildings occupied by the offices of the Department of the Interior, the Patent Office building, the old Postoffice building, now occupied by the General Land and Indian Bureaus, and the Pension Office building, and for improvements in the heating of the Patent Office building, including necessary conduits, the laying and construction of which are hereby authorized, Seventy-four Thousand Dollars.

3. That under the authority of the said provision the Secretary of the Interior requested the Secretary of the Treasury to permit some competent officer of the Treasury Department to take
2 charge of the work authorized and appropriated for by said act.

That pursuant to this request of the Secretary of the Interior, the Secretary of the Treasury did grant permission to your petitioner, who was, and is now, the Inspector of electric-lighting plants in the Treasury Department, to assume charge of said work.

4. That your petitioner, after a conference with the Chief Clerk of the Interior Department, assumed entire control of the work to be performed in accordance with the said act; and that he entered upon the work on May 15, 1901, and was so engaged in the said work until February 15, 1902.

That the services rendered by your petitioner in connection with said work consisted in making complete drawings and specifications covering the whole mechanical plant, including the necessary boilers, engines, dynamos, conduits, wires, pipes, etc.; and that your petitioner had sole charge of the construction and installation of the entire plant, which was completed under his sole direction in accordance with the provisions of the said act of Congress, and

was finally inspected and approved by your petitioner when completed, and upon his recommendation was accepted as satisfactory by the Interior Department.

5. That your petitioner performed all his services in this connection outside the hours of his employment as an official of the Treasury Department; and that during all the period in which your petitioner was engaged in the performance of this work, he constantly performed the regular duties and routine work of his office to the satisfaction of the Chief Clerk of the Treasury Department.

3 6. That your petitioner had frequent conferences with the Chief Clerk of the Interior Department; and while no contract was entered into for a definite compensation to your petitioner, it was the understanding that he was to be compensated for his services in this particular; and the said services were wholly outside the ordinary duties of petitioner's official position as Inspector of electric-lighting plants in the Treasury Department and were rendered at the request of the Secretary of the Interior, and in the expectation and belief of receiving a reasonable compensation therefor.

7. That the services rendered by your petitioner reasonably and fairly entitled him to a compensation equal to three per centum of the sum expended, said compensation of three per centum being the minimum fee for work of such character.

8. That your petitioner presented to the Secretary of the Interior a claim for One Thousand Dollars for the services so rendered. This sum of One Thousand Dollars was claimed because that amount remained unexpended out of the appropriations for the establishment of the said electric-lighting plant and for the improvements in heating, and because your petitioner believed the Secretary of the Interior would have the authority to allow that sum out of the balance remaining from the appropriations. But said sum does not represent the fair and true value of the services rendered by your petitioner.

The said claim was disallowed by the Comptroller of the Treasury, in an opinion of June 21, 1904.

9. That out of said appropriation of $74,000 there was
4 expended, under your petitioner's direction, $73,500:

That three per centum thereof represents the actual value of an engineer's services; therefore, that the United States is indebted to your petitioner in the sum of $2,200, being three per centum of said amount so expended.

Wherefore, your petitioner prays the judgment of this Honorable Court and that he may have judgment in the said sum of $2,200, with interest from February 15, 1902, when the said sum became due to him.

JULIAN E. WOODWELL.

WM. H. ROBESON, *Attorney.*

DISTRICT OF COLUMBIA, *ss:*

This day personally appeared before me Julian E. Woodwell, who, having been first duly sworn, deposes and says:

I am the claimant in the foregoing petition. I have read the petition and understand its contents. The statements therein made of my own knowledge are true; those made upon information and belief, I believe to be true.

JULIAN E. WOODWELL.

Subscribed and sworn to before me this the 2d day of July, 1904.

[SEAL.] MARTHA M. BECK,
Notary Public.

5 II.—*Amended Petition. Filed February* 14, 1906.

To the Honorable the Chief Justice and the Associate Justices of the Court of Claims:

Your petitioner, Julian E. Woodwell, comes now by leave of the Court first had and obtained, and files this his amended petition, and reaffirming the allegations of his original petition as if the same were in substance and in form here repeated, except paragraph 7 thereof, respectfully represents and shows—

That the services rendered by your petitioner as set out in the said original petition reasonably and fairly entitled him to a compensation equal to five per centum of the sum expended, to wit, five per cent. of $73,500, being $3,675.

Wherefore your petitioner prays the judgment of this Honorable Court, and that he may have judgment in the said sum of $3,675.

JULIAN E. WOODWELL.

WM. H. ROBESON, *Att'y.*

DISTRICT OF COLUMBIA, *ss:*

This day personally appeared before me Julian E. Woodwell, who having been first duly sworn, deposes and says:

6 I am the claimant in the original and in this amended petition. I have read the amended petition and understand its contents. The statements therein made are true according to the best of my knowledge, information and belief.

JULIAN E. WOODWELL.

Subscribed and sworn to before me this 14th day of February, 1906.

[SEAL.] JAS. N. FITZPATRICK,
Notary Public in and for the District of Columbia.

My commission expires, Feb'y 9, 1907.

7 III.—*Traverse. Filed April* 12, 1906.

In the Court of Claims of the United States, December Term, A. D. 1906-'7.

No. 25635.

JULIAN E. WOODWELL
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

J. A. VAN ORSDEL,
Assistant Attorney General.

8 IV.—*Argument and Submission of Case.*

On the 12th day of April, 1906, this case was argued by Mr. William H. Woodwell, on behalf of the claimant, and by Mr. Felix Brannigan, for the defendants, and submitted.

9 V.—*Findings of Fact and Conclusion of Law and Opinion of the Court. Filed May* 7, 1906.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant is a citizen of the United States and the inspector of electric light plants under the jurisdiction of the Treasury Department, and was such inspector and employee in the Treasury Department at all of the times hereinafter mentioned, receiving a salary of $2,000 per annum, and during which time the services hereinafter mentioned were rendered the claimant was a mechanical and electrical engineer.

II.

The sundry civil appropriation act for the fiscal year ending June 30, 1902, provided for the installation of an electric light plant for the Department of the Interior buildings and for improvement in the heating of the Patent Office buildings.

III.

The following correspondence took place between the office of the Secretary of the Interior and the office of the Secretary of the Treasury relative to the employment of the claimant in and about the installation of said electric lighting plant and the improvement of said heating of the Patent Office building.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *March* 11, 1901.

The Honorable the Secretary of the Treasury.

SIR: In the sundry civil act, approved March 3, 1901, appropriation is made

"For the establishment of an electric lighting plant for building occupied by offices of the Department of the Interior, the Patent Office building, the old Post-Office building, now occupied by the General Land and Indian Bureaus, and the Pension Office building, and for improvement in the heating of the Patent Office building, including the necessary conduits."

When this item was under consideration, the Committee on Appropriations of the House of Representatives secured, through the Assistant Superintendent of the Treasury, the itemized estimate of cost of the proposed work upon which the amount of appropriation is based, and, at the hearing before the committee, it was also indicated by members thereof that it would be expected that the projected work should conform to the estimate and the general plan outlined therein.

I have, therefore, to request that, if practicable, some competent person connected with the Treasury Department, expert in such matters, may be authorized to prepare detailed plans and specifications, upon which proposals for the work contemplated in the appropriation may be called for at an early date.

Very respectfully,

(Signed) E. A. HITCHCOCK, *Secretary.*

TREASURY DEPARTMENT,
WASHINGTON, *March* 14, 1901.

The Honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt of your letter, dated March 11, 1901, requesting that a competent person, now employed by this Department, be authorized to prepare the necessary plans and specifications covering the installation of a plant for the lighting of the old Post-Office Department building, Patent Office building, and Pension Office building, and the improvement in the heating of the Patent Office building, including conduits.

In reply you are informed that the work incident to the preparation of the plans and specifications can be performed under the supervision of a qualified employee of this office, who is familiar with the requirements, but as the work will involve the employment of draftsmen and other persons who can not be supplied from the regular force of this Department without detriment to its business

it is assumed that such service can be paid for from the appropriation provided for the installation of the plant. Such expense will not exceed $500, including the expense incident to a general inspection of the work during the period of the installation.

It is the judgment of this Department that the installation can be completed in all its details in the most satisfactory manner without exceeding the limits of the appropriation provided therefor—namely, $74,000.

Respectfully,
(Signed) O. L. SPAULDING,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May* 8, 1901.

The Honorable the Secretary of the Treasury.

SIR: Referring to your letter of March 14, 1901, in which you state that in compliance with the request of this Department
11 a competent person connected with the Treasury Department will be authorized to prepare necessary plans and specifications covering the installation of the electric-lighting plant for the buildings of this Department, and to your suggestion that the work will involve the employment of draftsmen and other persons who can not be supplied from the regular force of the Treasury Department, and which would involve an expense not to exceed $500, which would include the expense incident to the general inspection of the work during the period of installation, I have the honor to inclose herewith a copy of the decision of the Comptroller of the Treasury, to whom the matter was submitted by this Department, in which the conclusion is reached that prior to July 1, 1901, the preliminary expenses necessary to carry into effect the appropriation for the electric-lighting plant may be incurred, although payment therefor can not be made previous to that date.

The Department would be glad to have the preliminary work commenced at the earliest practicable date, and would be pleased to consider any recommendation as to the employment of the services of draftsmen, etc., referred to in your letter. If such services can not be procured upon the terms named by the Comptroller, it is believed that it can, in the meantime, be furnished by detail from some branch of this Department.

Very respectfully, THOS. RYAN,
Acting Secretary.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, *May* 10, 1901.

The Honorable the Secretary of the Interior.

SIR: Referring to your letter of May 8, 1901, you are informed that Mr. J. E. Woodwell, inspector of electric light plants, has been directed to confer with E. M. Dawson, chief clerk, Department of

the Interior, relative to the installation of an electric light, heat, and power plant, in the old Post-Office Department building in this city.

Respectfully,

(Signed) L. J. GAGE, *Secretary.*

Order.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *June* 21, 1901.

A board to consist of Mr. Edward M. Dawson, chief clerk of the Department; Mr. J. E. Woodwell, inspector of electric light plants, Treasury Department, and Mr. Joseph S. Hill, engineer, etc., "General Post-Office" is hereby constituted to, from time to time, open bids and recommend awards of contracts for the work embraced in the installation of the electric lighting plant for the buildings of the Interior Department, and in the improvement of the heating of the Patent Office building.

The board will meet at the office of the chief clerk of the
12 Department at such times as may be designated by advertisement for opening proposals for the work.

E. A. HITCHCOCK, *Secretary.*

Official copy for Mr. J. E. Woodwell.

(Signed) EDWARD M. DAWSON,
Chief Clerk.

(Through the Honorable the Secretary of the Treasury.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, *November* 23, 1901.

The Honorable the Secretary of the Interior.

SIR: Referring to your letter of November 21, 1901, requesting that Mr. J. E. Woodwell, inspector of electric-light plants, Treasury Department, be instructed to conduct a test of the engines and dynamos being manufactured by the Ridgway Dynamo and Engine Company, Ridgway, Pa., for the Interior Department, I have the honor to state that owing to prior and important instructions it will be impracticable for Mr. Woodwell to make the test the 25th instant, as desired by you.

You are advised, however, that, if the matter can be held in abeyance until December 2, 1901, Mr. Woodwell will be instructed to make the test.

Respectfully,

(Signed) H. A. TAYLOR,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *January* 2, 1902.

Mr. J. E. Woodwell, Inspector of Electric Lighting, Treasury Department.

SIR: Permission having been obtained from the Secretary of the Treasury for you to perform such service, you are hereby authorized and directed to proceed to Ridgway, Pa., as the representative of this Department at shop tests to be made, commencing on Monday next, the 6th instant, of the engines and dynamos to be furnished by the Ridgway Dynamo and Engine Company, under contract with this Department.

There is herewith inclosed, for your information and guidance, a copy of the specifications of the contract wherein it is provided that, "The regulation, guaranteed efficiency, heating effect, and insulation resistance shall be determined by actual test in the presence of the Department's authorized inspector, who shall determine test conditions. The tests to be made at the shops where the dynamos are constructed, upon due notification by contractors of their readiness to commence said test, and at the expense of the contractor, except traveling and other necessary expenses of Department's agent. Should the test be delayed or require repetition for any reason for
which the contractor is justly responsible, the cost of the
13 delayed or any subsequent test, including the traveling and
other necessary expenses of the Department's agent, shall be at the expense of the contractor."

Mr. L. K. Sager, of this Department (Patent Office), will be detailed to accompany you and assist in making the tests.

Your actual expenses while engaged upon this service will be paid by this Department upon presentation of proper accounts and vouchers from funds available.

Very respectfully,
(Signed) THOS. RYAN,
Acting Secretary.

IV.

Thereafter, and as a result of said correspondence, the claimant, as such mechanical and electrical engineer, performed certain services in and about the installation of said electric lighting plant and heating plant, between the 10th day of May, 1901, and the 1st day of February, 1902, and devoted 897 hours to said service, and also necessarily expended $110 in connection therewith.

V.

Such services rendered by the claimant were performed outside of his regular office hours as such employee in the Treasury Department, and during the time of the rendition thereof he also fully discharged his duties as such employee in the Treasury Department.

Conclusion of Law.

Upon the foregoing findings of fact, the court decides, as a conclusion of law, that the petition be, and the same is hereby dismissed.

Opinion.

BARNEY, *J.*, delivered the opinion of the court:

It appears without contradiction in this case that the claimant was an inspector of electric light plants employed in the Treasury Department, receiving a salary of $2,000 per annum, and was such employee at the times hereinafter mentioned.

The sundry civil appropriation act for the fiscal year ending June 30, 1902, provided for the installation of an electric light plant for the Department of the Interior buildings, and for improvement in the heating of the Patent Office building, in the following language:

"For the establishment of an electric lighting plant for buildings occupied by offices of Department of the Interior, the Patent Office building, the old Post-Office building, now occupied by the General Land and Indian bureaus, and the Pension Office building, and for improvement in the heating of the Patent Office buildings, including necessary conduits, the laying and construction of which are hereby authorized, the sum of seventy-four thousand dollars." (31 Stat. L., 1156.)

There being no person then employed in the Interior Department competent for that purpose, certain correspondence took place
14 between the Secretary of the Interior and the Secretary of the Treasury as to the authorization of some person connected with the Treasury Department to prepare detailed plans and specifications for such lighting and heating plant, and for other services in connection with said work, all of which appears in the findings herein.

Thereupon the claimant was directed by the Secretary of the Treasury to render this required assistance; and although the language of these directions is somewhat indefinite as to just what he was required to do, it appears that he did the principal part of the work in preparing these plans and specifications, and also rendered valuable assistance thereafter in the supervision and inspection of said work.

It appears that he was thus employed about 897 hours, and that this work was all done outside of his regular office hours, and some of it during the time which he could have taken for his vacation; also that during all this time he attended regularly and acceptably to his duties as such official in the Treasury Department.

It must be admitted that these facts present a strong equitable case in favor of the claimant, and we should be in favor of making a reasonable allowance for him, were it not for the fact that in our opinion the law forbids us so to do. It might be well to say here that

in its general application we believe this law to be wise and beneficent.

The following provisions of the Revised Statutes prohibit additional and double compensation to Government employees:

"SEC. 1763. No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.

"SEC. 1764. No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

"SEC. 1765. No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance or compensation.

These statutes, upon first inspection, would appear so plain in their provisions and in their application as hardly to admit of contention as to their proper construction. They have, however, been reviewed both by this court and the Supreme Court in several well-considered cases. For that reason it would hardly serve a useful purpose to review them in this case or to do little more than merely to refer to them. (Hoyt *v.* United States, 10 How., 109; Converse *v.* United States, 21 How., 463; Hall *v.* United States, 91 U. S., 559; United States *v.* Saunders, 120 U. S., 126; United States *v.* King, 147 U. S., 676.)

15 The rule governing these cases would appear to be but little more than a mere paraphrase of the statutes, but that is well done in the case of Hall *v.* United States (*supra*), and is as follows:

"Nor can any compensation for extra services be allowed * * * unless it appear that the head of the Department was authorized by an act of Congress to appoint an agent to perform the extra service; that the compensation to be paid for the service was *fixed by law;* that the service to be performed had respect to matters wholly outside of the duties appertaining to the office held by the agent, and that the money to pay for the extra services had been appropriated by Congress."

It has been held in several cases that these statutes are not applicable to those cases where two distinct offices, places, or employments, each of which has its own duties and its own compensation, are both held by one person at the same time. (United States *v.* Saunders, 120 U. S., 126, and cases cited.)

In the present case, conceding that the rendition of the services was authorized by law, certainly there was no "appropriation therefor explicitly stating that it was for such additional pay, extra allowance, or compensation." Nor is it shown that the claimant was di-

rected to perform these services outside of his regular office hours; on the contrary, it appears that each action was entirely voluntary on his part.

Neither can it be contended that the claimant held two distinct offices or places, each of which had its own duties and compensation. On the contrary, the services performed were merely incidental to a work appropriated for in general terms, and without making any explicit provision for their payment.

It is therefore orded that the petition be dismissed.

BY THE COURT.

16 VI.—*Final Judgment of the Court.*

No. 25635.

JULIAN E. WOODWELL
vs.
THE UNITED STATES.

At a Court of Claims held in the City of Washington on the 7th day of May, A. D., 1906, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendants and do order, adjudge and decree that the petition of the claimant, Julian E. Woodwell, be and the same is hereby dismissed.

BY THE COURT.

17 VII.—*Motion of Claimant for New Trial, Filed July 3, 1906, and Order of Court of April 22, 1907, Overruling Same.*

Claimant's Motion for a New Trial.

In this cause comes the claimant by attorney, and moves the court for a new trial thereof and for ground of said motion alleges:

I. That the court was in error in holding that the payment of the amount claimed for services rendered, as alleged in the petition, was additional or double compensation.

II. That the court was in error in holding that Sections 1863, 1764 and 1765 of the Revised Statutes, have application in any way to the claim preferred by the claimant in his petition.

III. That the court was in error in holding that the claim which is the subject of suit, is a claim for compensation for extra services.

IV. That the court was in error in holding that the services performed by the claimant as Inspector of Electric Light Plants in the Treasury Department, and those performed by him as a Mechanical and Electrical Engineer in the installment of the electric light plant for the Department of the Interior, were not two distinct offices or employments, for each of which the claimant was entitled to compensation.

V. That the court was in error in holding that because the performance of the claimant's services as such Mechanical and
18 Electrical Engineer, in the installment of the electric light plant for the Department of the Interior, outside of his regular office hours during which he was held to duty in the Treasury Department, was voluntary, he was not, therefore, entitled to recover for such services performed outside of his regular office hours.

VI. The court was in error in not holding that whether the performance of said services outside the claimant's regular office hours as an employee of the Treasury Department, was voluntary or not, the government, having requested the performance of such services and having accepted the benefit thereof, with full knowledge, is liable to compensate the claimant for such services.

VII. The court was in error in holding (if it so meant to hold) that an explicit provision for payment for such services in the appropriation bill was necessary to create liability on the part of the United States.

VIII. The court was in error in its finding that the claimant was directed by the Secretary of the Treasury to render the services performed by him in the installation of the electric lighting plant in the Interior Department.

IX. The court was in error in holding that the performance of the work averred in the petition, as a Mechanical and Electrical Engineer, in the installation of the electric lighting plant in the Department of the Interior, had any connection whatever with, or was in any wise embraced in, or was any part of the duties or obli-
19 gations of the claimant, under his employment by the Treasury Department.

X. The Court was in error in dismissing the petition.

WM. H. ROBESON,
Attorney for Claimant.

Order.

It is ordered that the claimant's motion filed July 3, 1906, for a new trial in the above-entitled cause be overruled. Filed April 22, 1907.

BY THE COURT.

20 VIII.—*Claimant's Application for, and Allowance of, Appeal to the Supreme Court of the United States.*

No. 25635.

JULIAN E. WOODWELL
vs.
THE UNITED STATES.

Motion for Appeal to the Supreme Court.

In this cause comes the claimant by attorney and prays the court for the allowance of an appeal to the Supreme Court of the United States from its judgment of April 22, 1907.

WILLIAM H. ROBESON,
Attorney for Claimant.

July 12, 1907.

Ordered that the above application for appeal by allowed as prayed for.

STANTON J. PEELLE,
Chief Justice.

July 16, 1907.

21 Court of Claims.

No. 25635.

JULIAN E. WOODWELL
vs.
THE UNITED STATES.

I, John Randolph, Assistant Clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law filed by the Court; of the judgment of the Court; of the motion of claimant for a new trial and order of Court overruling same; of the application of claimant for, and allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 17th day of July A. D., 1907.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 20,808. Court of Claims. Term No. 405. Julian E. Woodwell, appellant, *vs.* The United States. Filed July 18th, 1907. File No. 20,808.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907

JULIEN E. WOODWELL, Appellant
vs.
THE UNITED STATES
No. 143

BRIEF FOR APPELLANT

I

Statement of the Case

This cause is pending in this Honorable Court on appeal from the judgment of the Court of Claims dismissing the petition.

From a date prior to March 3, 1901, up to the time of the bringing of this suit, the appellant was inspector of electric light plants under the jurisdiction of the Treasury Department, receiving a salary of $2,000 per annum. (Rec., 4.)

The Sundry Civil Appropriation Act for the fiscal year ending June 30, 1902, contained this provision:

> For the establishment of electric lighting plants for the buildings occupied by the offices of the Department of the Interior, the Patent Office Building, the Old

Post Office Building, now occupied by the General Land and Indian Bureaus, and the Pension Office Building, and for improvements in the heating of the Patent Office Building, including necessary conduits, the laying and construction of which is hereby authorized, $74,000. (31 Stat. L., p. 1156.)

On March 11, 1901, the Secretary of the Interior addressed the Secretary of the Treasury, requesting that some competent person connected with the Treasury Department, expert in such matters, be authorized to prepare plans and specifications upon which proposals for the work contemplated in the said appropriation act might be called for. (Rec., p. 5.)

On March 14, 1901, the Secretary of the Treasury replied to this communication, informing the Secretary of the Interior that the work referred to could be performed under the supervision of a qualified employee of the Treasury Department, who was familiar with the requirements. (Rec., pp. 5, 6.)

On May 8, 1901, the Secretary of the Interior replied, asking the recommendation of the Secretary of the Treasury as to the employment of the services of draughtsmen, &c. (Rec., p. 6.) To this the Secretary of the Treasury replied on May 10, 1901, stating that J. E. Woodwell, appellant, had been directed to confer with the Chief Clerk of the Department of the Interior relative to the installation of the lighting, heating and power plant contemplated by the act in question. (Rec., pp. 6, 7.)

On June 21, 1901, the Secretary of the Interior appointed the chief clerk of his department and the appellant, and another, a board which should, from time to time, open bids and recommend awards of contracts for the work embraced in the installation of the plant. (Rec., p. 7.)

On November 23, 1901, the Secretary of the Treasury, replying to a letter from the Secretary of the Interior which

does not appear in the record, stated that, with reference to the letter of the Secretary of the Interior requesting that appellant be instructed to conduct a test of the engines and dynamos being manufactured by the company to whom the contract had been awarded, it would be impracticable for Mr. Woodwell to make the test at the time named, but that he could make it later. (Rec., p. 7.)

On January 2, 1902, the Secretary of the Interior addressed the appellant as follows:

> "Permission having been obtained from the Secretary of the Treasury for you to perform such service, you are hereby authorized and directed to proceed to Ridgeway, Pennsylvania, as the representative of this Department at shop tests to be made, commencing on Monday next, the 6th instant, of the engines and dynamos to be furnished by the Ridgeway Dynamo and Engine Company, under contract with this Department."

The letter added that appellant's expenses while engaged in such services would be paid by the Department. (Rec., p. 8.)

As the result of said correspondence the appellant performed certain services in and about the installation of the plant, between May 10, 1901, and February 1, 1902, devoting 897 hours to the service, and expending necessarily $110 in connection therewith (Rec., p. 8, Finding IV).

These services rendered by the claimant were performed outside of his regular office hours as such employee, and during all this period he fully discharged his duties as an employee of the Treasury Department (Rec., p. 8).

The original petition sought to recover three per cent. of the amount expended, $2,200, but the amended petition averred that a reasonable and fair compensation was five per cent. of the sum expended in the construction of the

plant, being $3,675, and judgment was asked in that sum (Rec., p. 3).

The petition was dismissed on May 7, 1906 (Rec., p. 11); a motion for new trial was filed July 3, 1906, was overruled April 22, 1907, and this appeal allowed July 16, 1907 (Rec., p. 13).

Specification of Errors

The Court of Claims was in error—

1. In holding that because the claimant was an employee of the Government he could not recover the value of services performed for the Government entirely distinct from, and independent of, those required of him by virtue of his office.

2. In holding this to be a claim for additional or extra compensation, and that it is subject to the provisions of Sections 1763, 1764 and 1765 of the Revised Statutes.

3. In holding that the claimant did not hold two distinct offices or places, each of which had its own duties and compensation.

4. In holding that an explicit provision for payment for such services in the appropriation bill was necessary to create liability for claimant's services on the part of the United States.

5. In not awarding a judgment in appellant's favor for $3,675.

Argument

The first error assigned is the holding by the court below that one in the employ of the Government cannot recover for services rendered the Government in an entirely distinct and separate employment. The court did not use that exact language; but we shall submit that to be the necessary result of its action and opinion in this case. Appellant was employed in the Treasury Department, being Inspector of Electric Light Plants in those buildings under its jurisdic-

tion. He was an officer of the Treasury Department, subject only to the orders of his superiors in that Department, and obligated to perform only the duties of the position he held there. If, after his office hours, the Postmaster-General had employed him to devise a better plan for the distribution of mails in the city of Washington, or if the Department of Justice had sought his aid at a time when he was not held to the performance of duties to the Treasury Department, or if he had been called upon to act as a private secretary at the White House during the period of his vacation—for none of these services could he have recovered if this decision is correct.

Under this decision a night watchman in the Treasury Department, whom the Secretary of War might employ to plant flowers in the public parks in the afternoons, could not recover for the latter services; which is to say, in short, that one in the Government employ on a salary, cannot contract for the performance of entirely distinct duties and receive remuneration therefor.

As claimant was subject to the direction and control of the Secretary of the Treasury, the Secretary of the Interior had no jurisdiction of him and no right to command his time or service except upon the making of a suitable remuneration therefor.

The Secretary of the Treasury could not have required him to perform any service to the Interior Department, because he was the inspector of electric lights, charged with the duty of such inspection in those buildings which were under the control of the Treasury Department.

If, therefore, the Secretary of the Treasury could not have required him to perform duties under the direction of the Secretary of the Interior, and if the Secretary of the Interior had no jurisdiction over him, he was clearly not compellable to perform the service of installing an electric light and heating plant in the Interior Department.

It happened that he was an expert, such as the Secretary of the Interior desired and was compelled to have, in order

to provide the installation of this plant for the Interior Department.

The Secretary of the Interior wisely sought the aid of some person possessing such skill and knowledge, and found such a person in the claimant.

If the Secretary of the Interior had not secured the services of the appellant he would have had to secure the services of some other person, either already in the Government service, or out of it, and to pay for such services, but he chose the claimant.

Therefore, as we have said, to hold that this claimant cannot recover the reasonable value of his services is to give as the reason therefor that he was already in the Government employ. As we shall presently show, this holding is directly to reverse at least two decisions of the Court of Claims itself, and to be unmindful of several decisions of this Honorable Court.

II

The second error assigned is that the court held this to be a claim for additional or extra compensation and subject to the provisions of Sections 1763, 1764, 1765 of the Revised Statutes.

What we have already said demonstrates that this is not a claim for additional or extra compensation. These services were performed, as the court finds, outside of appellant's regular office hours, during a period in which he also fully discharged his duties as an employee of the Treasury Department (Rec., p. 8). "Additional compensation" means, necessarily, an increased compensation for the performance of the same service to which the employee was held and for which he was otherwise compensated. It is manifest that to pay the appellant for services performed by him, which he was under no obligation to perform, would not be compensation additional to that he received for per-

forming the duties of his office. That it would not be "double compensation" is very evident, for the same reason.

Section 1763 of the Revised Statutes is in these words:

> "No person who holds an office, the salary or annual compensation attached to which amounts to the sum of $2,500, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law."

The clear meaning of this statute is that no person shall be compensated with the salaries of two positions which are incompatible, if, *in the same time*, the person performs the duties of two offices. That is far from meaning that a man who is a salaried officer of the Government cannot contract to perform out of his own time, other services to the Government and receive compensation therefor. If the appellant had performed these services during the time he was held to service under his permanent office in the Treasury Department, and was receiving the salary attached to his permanent office, then he might be within the principle of this statute. But the Court of Claims construed this statute to be one which excludes a man *whose salary was less than $2,500* (Rec. p. 4), from receiving pay for the performance of any other work, as, for instance, during his vacation, or out of office hours, or during a period when his permanent salary is discontinued. It is impossible that the statute has any application to such conditions.

Section 1764 is in these words:

> "No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever which any officer or clerk may be required to perform, unless expressly authorized by law."

This statute names two conditions under which compensation is prohibited:

First, where the duties discharged belonged to any other officer or clerk in the same or any other department. Manifestly, this is not a suit for compensation "by reason of the discharge of duties which belonged to any other officer or clerk in the same or any other Department."

The services rendered by the appellant were rendered in the performance of a special undertaking. There was no one available in the Department of the Interior fitted to prepare these plans or specifications or to supervise the construction of the plant. The Secretary of the Interior was acquainted with the fact that work of a similar character was being performed throughout the country upon the public buildings under the control of the Treasury Department, and, therefore, sought from the Treasury Department a competent person to undertake this work.

The second class of cases in which compensation is expressly prohibited are those for "any extra services whatever, which any (the) officer or clerk may be required to perform, unless authorized by law." Appellant's work did not constitute "extra services," and as it was a distinct service, totally apart from that to which he was held by virtue of his office, he could not have been required to perform it.

Section 1765 of the statutes is as follows:

> "No officer in any branch of the public service, or any other person whose salary, pay or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service, or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

This is a prohibition against *additional or extra* compensation. Appellant's claim, as we have shown, is not one for additional compensation, nor for extra pay. It is a simple claim for the value of independent and separate service rendered during time to which the Government had no claim, and which was the claimant's own.

In its opinion, the court, referring to these statutes, notes the fact that they have been several times construed by the Supreme Court. It is remarkable that the cases cited on page 10 are unqualifiedly in support of the position of the claimant.

Let us take the case of Saunders (120 U. S., 126, 129), where the court, construing these three statutes, says:

> "We are of the opinion that, taking these sections all together the purpose of this legislation was to prevent a person holding an office or appointment, for which the law provides a definite compensation by way of a salary, or otherwise, which is intended to cover all services which, as such officer, he may be called upon to render, from receiving extra compensation, additional allowances, or pay for other services *which may be required of him* either by act of Congress or *by order of the head of his Department*, or in any other mode, added to or connected with the regular duties of the place which he holds * * *"

Note that the application is, in this opinion, made to a case of payment to one for services *which may be required of him*, and which he is directed to perform by act of Congress or by the order of the head of the department of which he is an employee.

The opinion continues—

> "but that they have no application to the case of two distinct offices, or places or employments, each of which has its own duties and its own compensation, which offices may be held by one person at the same

> time. In the latter case he is, in the eye of the law, two officers, or holds two places or appointments, the functions of which are separate and distinct, and, according to all decisions, he is, in such case, entitled to recover two compensations."

Could a clearer case for the application of this decision be presented than this one? Is it possible to find a case regarding which it may be more aptly said that these statutes have no application because two distinct employments were being filled, each of which had its own duties and its own compensation, and both of which might be held by one person at the same time?

Let us examine the other cases cited in the opinion. In the King case (147 U. S., 676) compensation was denied to the clerk of the circuit court for services as jury commissioner, but on the ground distinctly stated in the opinion, that the services as jury commissioner were "incidental and germane to his regular duties as clerk."

> "The law does not forbid compensation for extra services which have no affinity or connection with the duties of the office he holds." (21 Howard, p. 469.)

None of these opinions of the Supreme Court are considered *in extenso* in the opinion of the court below; but the court cites from the opinion in the case of Hall (91 U. S., 559) a statement which we respectfully submit has no application to the circumstances of this case. The language cited is:

> "Nor can any compensation for extra services be allowed * * * unless it appear that the head of a Department was authorized by an act of Congress to employ an agent to perform the extra service, etc." (Rec., p. 10.)

And in this statement of that opinion is shown the error of the court below in that it has considered this claim as

being one for extra services. It is not one for extra services. It is a claim for compensation for distinct services "having no affinity or connection with the duties of the office" held by appellant.

III

It is declared in the last paragraph of the opinion of the Court of Claims (Rec., p. 11) that it cannot be contended "that the claimant held two distinct offices or places, each of which had its own duties and compensation."

It is, perhaps, inaccurate to say that the claimant held two offices. He held one "office," that of Inspector of Electric Lighting Plants in the Treasury Department. He had one separate employment—that of installing an electric lighting and heating plant in the buildings of the Department of the Interior. One of these, his office, had a distinct compensation. In his employment by the Interior Department he was a hired man. It is impossible for counsel to conceive that the duties of the officer and the duties of the hired man, were not entirely distinct; and that, as an officer, the claimant was not entitled to his salary, and as a hired man, to his fair wages.

IV

The court, in the very last sentence of its opinion (Rec., p. 11) says that the services performed (as a hired man)

> "were merely incidental to the work provided for in general terms, and without making any explicit provision for their payment."

This statement of the opinion would be without pertinency if the court had not considered in connection with it, the language of the opinion in the Hall case (*supra*) that compensation for *extra services* should not be allowed "unless it appear that the head of the Department was authorized by an act of Congress to employ an agent to perform the *extra services;* that the compensation to be paid for the service was *fixed by law.* * * * "

This court will observe that the appropriation act authorized the expenditure of $74,000 "for the establishment of an electric lighting plant for the buildings occupied by the offices of the Department of the Interior * * * and for improvements in the heating of the Patent Office Building, including necessary conduits, the laying and construction of which are hereby authorized. * * * " (Rec., p. 1.)

Is it possible that under this appropriation the Secretary of the Interior could not have employed an engineer outside the Government service, or within it, because Congress did not, in the act, say how much the Secretary of the Interior could pay an engineer for doing that work? An engineer was as truly a necessary adjunct to the work as the men who fitted the pipes and dug the conduits. The error of the court, of course, was in holding that this work constituted "extra service," because performed by one who was in the employ of the Government.

Contrary Opinins of the Court of Claims

It seems to counsel remarkable that the court below did not, in its opinion, consider two of its own recent decisions, which, we respectfully submit, are directly opposed to the decision in this case.

In the case of Crosthwaite (31 Ct. Clms., 300) the Court of Claims declared:

> "The Attorney General cannot commission an Examiner in his Department as Special Assistant Attorney, and assign him to criminal business, and send him into the grand jury room to examine witnesses, then deny that he was acting as District Attorney. It is settled that a person may hold two offices and receive the salaries of both, each having it own duties and compensation, and they not being incompatible."

The case of Peter Collier (22 Ct. Clms., 125), is absolutely on all fours with this one. In that case the court said:

> "The court is of the opinion that the service which the claimant rendered, *having been one which could not have been legally required of him either by the Secretary of the Treasury, or Commissioner of Agriculture, and having been rendered with the knowledge and consent of his superior officer, and for a Department having no official control of him, and to which he owed no service whatever,* and the employment, moreover, *being within the legal discretion of the Secretary of the Treasury, and for the benefit of the Government,* the case is naturally ruled by the decisions of the Supreme Court in the cases of (Converse *vs.* U. S., 21 How., 463), (U. S. *vs.* Brindle, 110 U. S., 688) and (U. S. *vs.* Saunders, 120 U. S., 126)."

Now, taking this opinion phrase for phrase, we say that the service rendered by this appellant was "one which could not have been legally required of him either by the Secretary of the Treasury" or the Secretary of the Interior; that it was rendered with the knowledge and consent of appellant's superior officer; that it was rendered "for a Department having no official control" of appellant, and for a Department "to which he owed no service whatever;" and that the employment was "within the legal discretion of the Secretary of the Interior" and "for the benefit of the Government;" and, therefore, that it is "naturally ruled" by the decisions of this honorable court cited in the opinion above given; for, all these things being so, where is there a difference between the case of Peter Collier who recovered a judgment, and this case of appellant, who is denied a judgment? We say that there is not a material difference, and that if the Collier judgment is right the Woodwell judgment is

wrong, and that to sustain this judgment dismissing appellant's case, the court below had to reverse the judgment in the Collier case. The two cannot stand together.

And surely the decision now complained of is not in harmony with the decisions of this court to which we have herein asked its attention.

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